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Attorneys for Defendants Council on American-Islamic Relations, Inc., Council on American Islamic Relations Action Network, Inc., and Council on American Islamic Relations of Santa Clara, Inc.

IN THE UNITED STATES DISTRICT COURT  
THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

MICHAEL SAVAGE,  
Plaintiff,

**V.**

COUNCIL ON AMERICAN-ISLAMIC  
RELATIONS, INC., COUNCIL ON  
AMERICAN ISLAMIC RELATIONS ACTION  
NETWORK, INC., COUNCIL ON AMERICAN  
ISLAMIC RELATIONS OF SANTA CLARA,  
INC., and DOES 3-100,

Defendants.

Case No. CV07-06076 SI

**DECLARATION OF KURT OPSAHL IN  
SUPPORT OF MOTION FOR AWARD  
OF ATTORNEYS' FEES AND COSTS**

Date: October 3, 2008

Time: 9:00 a.m.

Honorable Susan Illston

1. I am an attorney for the Defendants in this matter and a member in good standing of the California State Bar, and am admitted to practice before this Court. I have personal knowledge of the matters stated in this declaration. If called upon to do so, I am competent to testify to all matters set forth herein.

2. I am a Senior Staff Attorney at Electronic Frontier Foundation (“EFF”), which is a non-for-profit corporation organized and existing under the laws of The Commonwealth of Massachusetts with its principal place of business in San Francisco, California. I have been a Senior Staff Attorney at EFF since 2007 and was a Staff Attorney before that beginning in 2004.

3. EFF generally represents clients without charge in precedent-setting litigation of national importance involving novel and complex issues arising from the intersection of new technology with privacy rights, free press and free expression rights, and other civil liberties. Nevertheless, EFF attorneys have hourly rates for purposes of cases in which EFF is entitled to attorneys’ fees.

4. My 2007 hourly rate, which is the hourly rate for purposes of this matter, is \$425 per hour.

5. I am familiar with the prevailing hourly rates in the San Francisco Bay Area for lawyers of comparable education, expertise, and experience. As part of the process of setting rates for EFF attorneys, I have researched and reviewed the hourly rates for lawyers of comparable education, expertise, and experience at other law firms. My rates are well within the prevailing hourly rates in the San Francisco Bay Area for lawyers of comparable education, expertise, and experience who handle matters of the type involved in this litigation.

6. Courts have found EFF’s rates to be reasonable in several recent cases. In *Elec. Frontier Foundation v. Office of the Director of National Intelligence*, No. 07-05278 SI, 2008 U.S. Dist. LEXIS 44050 (N.D. Cal. June 4, 2008), for example, this Court found my 2007 hourly rates to be reasonable. In *Apple v. Does* (Santa Clara Superior Ct., Case No. 1-04-CV-032178),

1 the court also found my hourly rate of \$425 to be reasonable. In *In re Sony BMG CD*  
 2 *Technologies Litigation* (S.D.N.Y. Case No 1:05-cv-09575-NRB), EFF attorneys, including  
 3 myself, were paid fees at their hourly rates as part of the settlement of the action in June 2006. *Id.*  
 4 at Dkt. No. 127. In addition, in *OPG v. Diebold*, 337 F. Supp. 2d 1195 (N.D. Cal. 2004), EFF  
 5 attorneys were paid fees pursuant to a settlement after a summary judgment victory at the  
 6 organization's 2004 hourly rates.

7  
 8 7. In 1997, I received my Juris Doctor degree from the University of California at  
 9 Berkeley School of Law (Boalt Hall), where I was an editor of both the California Law Review  
 10 and the Berkeley Technology Law Journal.

11 8. Before joining EFF in 2004, I worked for the law firms of Perkins Coie LLP (1999-  
 12 2004) and Severson & Werson PC (1997-1998). In addition, I was the Research Fellow to  
 13 Professor Pamela Samuelson at the University of California at Berkeley, School of Information  
 14 Management & Systems (1998-1999). I have authored more than 15 articles for legal  
 15 publications, and was a co-editor of the Electronic Media and Privacy Law Handbook (ISBN  
 16 1879650118). In 2007, I received a California Lawyer of the Year (CLAY) Award for Media  
 17 Law.  
 18

19 9. After a careful review of our files on the case, I estimate the minimum number of  
 20 hours I spent on the answer, motion for judgment on the pleadings, reply in support of the motion  
 21 for judgment on the pleadings, motion for judicial notice, and the motion for fees as follows:  
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<u>Date</u>	<u>Task</u>	<u>Hours</u>
01/30/08	Review and revise motion for judgment on the pleadings	1.0
02/15/08	Review and analysis of Savage's opposition	1.3
02/21/08	Review and revise reply to opposition	1.3
03/06/08	Preparation for hearing on motion for judgment on pleadings.	1.0
08/17/08	Analysis of standards for motion for attorneys' fees.	0.5
=====		===
Total hours:		6.1

10. In total, I spent no fewer than 6.1 hours on this litigation. At my hourly rates, my total fees are \$2,592.50.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct to the best of my knowledge and belief. Executed August 28, 2008 in San Francisco, California.

/s/ Kurt Opsahl  
Kurt Opsahl